



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170849

PRELIMINARY RECITALS

Pursuant to a petition filed December 16, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 21, 2016, at Sheboygan, Wisconsin.

The issue for determination is whether the Sheboygan County Department of Human Services (the agency) correctly determined that the Petitioner was overpaid \$1,730.0 in FoodShare benefits for the period of January 1, 2015 through November 30, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] Economic Support Supervisor
Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. The Petitioner completed a renewal on October 30, 2015. At that time, the agency discovered that it had been incorrectly calculating the Petitioner's FoodShare allotment, because it used the

incorrect amount for gross income, and incorrectly doubled the amount the Petitioner paid in child support. (Testimony of Ms. [REDACTED])

3. On November 2, 2015, the agency sent the Petitioner a FoodShare Overpayment Notice, Claim # [REDACTED], asserting an overpayment of \$1,730.00 for the period of January 1, 2015 to November 30, 2015. The overpayment was determined to be agency error. (Exhibit 7)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 16, 2015. (Exhibit 1)
5. Petitioner's sole source of income is from [REDACTED]. His gross monthly payment has been \$1,333.00 per month since December 2014, and he has had \$323.00 deducted for child support, since November 2014. (Exhibits 3 and 5)
6. Petitioner is a household of one person. He pays rent in the amount of \$350.00 per month and he pays for heating his residence. The Petitioner did not report any excess, out-of-pocket medical expenses. (Testimony of Ms. [REDACTED]; Exhibit 3)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook (FSH) § 7.3.1.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

If the overpayment was due to client error, the agency may go back six years to recover an overpayment, but if the overpayment was due to agency error, the agency may only go back 12 months or to the date the change would have been effective, whichever is more recent. *FSH* § 7.3.2.1

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The Petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

There appears to be no dispute that Petitioner's income and deductions remained the same between January 2015 and November 2015.

However, the amounts allowed for certain deduction changed on October 1, 2015.

For the period of January 2015 through September 30, 2015, the following deductions were allowed:

- (1) a standard deduction –

This was \$155 per month for a household of 1-3 people, 7 *CFR* § 273.9(d)(1):

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 *CFR* § 273.9(d)(2);

This did not apply to the Petitioner, because he had no earned income

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR* § 273.9(d)(3);

Petitioner did not report any of these expenses

- (4) dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and

Petitioner paid child support, in the amount of \$323.00 per month.

- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5).

The standard utility allowances were as follows:

| | |
|---|-------|
| HSUA – Heating Standard Utility Allowance | \$446 |
| LUA – Limited Utility Allowance | \$321 |
| EUA – Electric Utility Allowance | \$161 |
| WUA-Water and Sewer Utility Allowance | \$74 |
| FUA- Cooking Fuel Allowance | \$37 |
| PUA- Phone Utility Allowance | \$30 |
| TUA – Garbage and Trash Utility Allowance | \$19 |

It is undisputed that the Petitioner is entitled to the full HSUA of \$446

Applying the relevant deductions to Petitioner's income we have the following net income calculation, effective January 1, 2015 through September 30, 2015:

| | | | |
|-------------------------------------|------------|----------------------------------|-----------|
| Gross Income | \$1333.00 | | |
| No Earned Income Deduction | | | |
| Standard Deduction | -\$155.00 | Rent | \$350.00 |
| No Medical Expenses exceeding \$35 | | HSU | +\$446.00 |
| Dependent Care Expenses | -\$323.00 | -50% net income | -\$427.50 |
| | | <u>before shelter deduction</u> | |
| Net Income before shelter deduction | \$855.00 | Excess Shelter Expense: \$368.50 | |
| Excess Shelter Expense | - \$368.50 | | |
| Net Income | \$486.50 | | |

Households of one, with a net income of \$486.50 are eligible for \$48.00 per month in FoodShare benefits. *FSH* §8.1.2

It is undisputed that during the time in question the Petitioner received \$194 per month in benefits. Thus, the overpayment for the 9 month period of January 1, 2015 through September 30, 2015, works out to be as follows:

| |
|------------------------------|
| \$194.00 |
| -\$48.00 |
| <hr/> |
| \$146.00 monthly overpayment |

\$146.00 x 9 months = \$1314 total overpayment for January 1, 2015 through September 30, 2015.

Effective October 1, 2015, the following deductions were allowed:

- (1) a standard deduction –

This is \$155 per month for a household of 1-3 people, 7 *CFR* § 273.9(d)(1):

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 *CFR* § 273.9(d)(2);

This did not apply to the Petitioner, because he has no earned income

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR* § 273.9(d)(3);

Petitioner did not report any of these expenses

- (4) dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and

Petitioner paid child support, in the amount of \$323.00 per month.

- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5).

The standard utility allowances are as follows:

| | |
|---|-------|
| HSUA – Heating Standard Utility Allowance | \$458 |
| LUA – Limited Utility Allowance | \$293 |
| EUA – Electric Utility Allowance | \$119 |
| WUA-Water and Sewer Utility Allowance | \$78 |
| FUA- Cooking Fuel Allowance | \$46 |
| PUA- Phone Utility Allowance | \$30 |
| TUA – Garbage and Trash Utility Allowance | \$20 |

It is undisputed that the Petitioner was entitled to the full utility deduction of \$458.

FSH, §§ 4.6.7.1 and 8.1.3.

Applying the applicable deductions to Petitioner's income we have the following net income calculation, effective January 1, 2015 through November 30, 2015:

| | | | |
|-------------------------------------|------------|----------------------------------|-----------|
| Gross Income | \$1333.00 | | |
| No Earned Income Deduction | | | |
| Standard Deduction | -\$155.00 | Rent | \$350.00 |
| No Medical Expenses exceeding \$35 | | HSU | +\$458.00 |
| Dependent Care Expenses | -\$323.00 | -50% net income | -\$427.50 |
| | | <u>before shelter deduction</u> | |
| Net Income before shelter deduction | \$855.00 | Excess Shelter Expense: \$380.50 | |
| Excess Shelter Expense | - \$380.50 | | |
| Net Income | \$474.50 | | |

Households of one, with a net income of \$474.50 are eligible for \$51.00 per month in FoodShare benefits.
FSH §8.1.2

It is undisputed that from January 1, 2015 through November 20, 2015, the Petitioner had received \$194.00 per month in FoodShare benefits. As such, the monthly overpayment was:

| |
|---------------------------|
| \$194 |
| -\$51 |
| <hr/> |
| \$143 monthly overpayment |

Consequently, the total overpayment for the two month period for October and November 2015 works out to be:

\$143 x 2 months = \$286 total overpayment for October and November 2015.

The grand total of the overpayment then is:

| |
|--|
| \$1314 total overpayment for January 2015 through September 2015 |
| +\$286 total overpayment for October and November 2015 |
| <hr/> |
| \$1600 Grand Total for January 2015 through November 2015 |

The agency calculated an overpayment of \$1,730.00. Looking at the overpayment worksheets, it looks like the agency failed to use the correct child support deduction. As such, its calculation of the overpayment was incorrect.

CONCLUSIONS OF LAW

The agency did not correctly determine that the Petitioner was overpaid \$1,730.00 in FoodShare benefits for the period of January 1, 2015 through November 30, 2015.

THEREFORE, it is

ORDERED

That the agency amend Claim # [REDACTED] to reflect a total overpayment of \$1,600.00 for the period of January 1, 2015 to November 30, 2015. The agency shall take all administrative steps to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

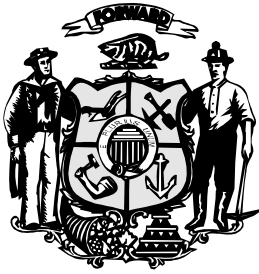
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of January, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 26, 2016.

Sheboygan County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability